

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of TracFone Wireless, Inc.)	CC Docket No. 96-45
For Modification of Public Safety Answering)	DA 08-2779
Point Modification)	
)	
Virgin Mobile USA, L.P's Petition)	CC Docket No. 96-45
For Forbearance and Designation as)	DA No. 07-4983
An Eligible Telecommunications Carrier in)	
The State of New York and the)	
Commonwealths of Pennsylvania and Virginia)	

**MOTION FOR RECONSIDERATION OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC), pursuant to 40 C.F.R. §§ 1.106 seek reconsideration or clarification of the *TracFone Modification Order* and the *Virgin Mobile ETC Forbearance* released March 5, 2009 at Docket No. 96-45.

PROCEDURAL BACKGROUND

The *TracFone Modification Order* allows TracFone, a reseller of wireless service, to “self certify” that its wireless Lifeline service delivers 911/E911 calls to the Public Safety Answering Points (PSAPs) in any state where TracFone has Eligible Telecommunications Carrier (ETC) designation under Section 214 of the Telecommunications Act of 1996 (TA-96). Self-certification is allowed if, within 90 days of TracFone’s request, a PSAP does not provide the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP’s service area.¹ The *Virgin Mobile Order* provides similar relief to Virgin Mobile.

STANDARD FOR RECONSIDERATION

Reconsideration or clarification is appropriate “where the petitioner shows either a material error or omission in the original order.”² In addition, a petition is granted if “reconsideration is in the public interest.”³

I. THE MARCH ORDERS IGNORE AN IMPORTANT LEGAL ISSUE.

On March 2, 2009, three days before the FCC issued the *March Orders*, including a requirement to act on Virgin Mobile’s looming petition seeking forbearance under

¹ *TracFone Modification Order*, para. 1.

² *In re: Applications of D.W.S. Inc.*, File Nos. BR-899720UD *et al.*, Memorandum Opinion and Order, 11 FCC Rcd. 2933 (1996).

³ *Amendment of Part I of the Commission’s Rules – Competitive Bidding Procedures*, WT Docket No. 97-82, Second Order on Reconsideration of the Third Report and Order, 18 FCC Rcd. 10180, 10212 (2003).

Section 10 of TA-96, TracFone filed a Motion for Partial Dismissal and Response to the Ex Parte Submission of the PaPUC. The PaPUC provided a detailed and factually-intensive reply on March 4, 2005 given the looming March 5, 2009 deadline for acting on the *Virgin Mobile* and, by extension, the *TracFone* petitions.⁴

In those comments, the PaPUC reiterated its concern that Section 254(b)'s universal service principles, a statutory mandate imposed on carriers and regulators, sets forth specific criteria governing universal service. These criteria include quality service at just and reasonable rates and "reasonable comparability" in those services between rural, insular, and high-cost areas compared to urban areas.

The *March Orders* elevate comparability over affordability in violation of Section 254 and federal precedent.⁵ Moreover, the guiding principles cited in the *March Orders* i.e., increased customer choice, high-quality service offerings, and mobility are not statutory criteria. Finally, Sections 214, governing ETC designation, and Section 254 are not intended to support reduced calling service.

Reconsideration is appropriate because the forbearance from the statutory obligation to own facilities is the root cause of these problems.⁶ The predictive effect in this proceeding demonstrates that the actual effect is far different from the effect in 2005.

The *March Orders* do not address these legal issues. Consequently, reconsideration or clarification is appropriate to address this issue – particularly now that the precedent set in those *March Orders* will be used in other jurisdictions.⁷

⁴ The petitions are intertwined because Virgin Mobile sought the same forbearance from the Section 214 mandate to own facilities as a precondition to securing ETC designation, a forbearance that prior to the *March Order* had only been granted to TracFone – a result secured under questionable procedural circumstances. See *PaPUC Answer* (March 5, 2009), pp. 4-6.

⁵ *PaPUC Answer*, (March 4, 2009), pp. 11-12.

⁶ In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), (September 5, 2005), 20 FCC Rcd 15095 (2005).

II. THE *MARCH ORDERS* INCORRECTLY CONCLUDE THAT THE PAPUC WAS “UNCLEAR” ABOUT DRIVE TESTING

The *March Orders* mistakenly conclude that the PaPUC was “unclear” about drive testing.⁸ The PaPUC’s Reply Comments filed January 13, 2009 on page 6 state that the same drive testing should be required of TracFone that is required of all other carriers seeking PSAP certification in Pennsylvania. The PaPUC also stated in its March 4, 2009 Answer on pages 13-14 that TracFone’s compliance with these requirements was a critical public safety consideration. Reconsideration is appropriate because that mistaken conclusion was part of the justification in the *March Orders* for granting the modification relief that shifted the obligation to conduct drive testing from carriers to PSAP operators.⁹

III. THE FCC MUST ISSUE AN ORDER CLARIFYING THE PROCEDURES FOR IMPLEMENTING THE *MARCH ORDERS*.

Assuming, otherwise, *arguendo*, that the FCC affirms the *March Orders*, the PaPUC seeks clarification on four implementation issues with the *March Orders*. These issues arise from paragraph 6 of the *Tracfone Order* in which the FCC said that TracFone may not make a self-certification until it has provided a PSAP with all of the “information and/or equipment” requested by the PSAP.

A. *The Trigger for “Self Certification” by Wireless Carriers.* The FCC must clarify that the “trigger” for the 90-day period, after which a wireless carriers may self-certify, is submission to the PSAP of a “complete as filed” request containing the information and handsets.

⁷If the FCC determines that this reduced level of service compared to other service is entirely consistent with Sections 254 and 214, the PaPUC is prepared to make wireless ETC designations based on resolution of this legal issue.

⁸ *TracFone Modification Order*, para. 7.

⁹ *PaPUC Answer* (March 5, 2009), pp. 13-16.

B. *The Trigger for the March Orders.* The FCC must clarify that the computation period for the 90-day period applied to the carriers in the *March Orders* is expiration of any appeal or reconsideration. The PSAPs should not have to engage in making certifications under the rulings in the *March Orders* until the FCC has issued a final order or any appeals are resolved. Requests prior to a final determination on this Reconsideration Petition or any appeal are untimely.

D. *Information Submissions.* The FCC must clarify that the "information" provided to PSAPs must consist of two required statements. The first must come from an officer or counsel of the reseller wireless carrier, without facilities, certifying to the appropriate PSAP that the listed underlying facilities-based wireless carrier used by the reseller in that PSAP's area can deliver or transmit 911 and E911. The second statement must come from an officer, agent, or appropriate employee of the owner of the physical facilities that the wireless carrier is relying on to transmit or deliver 911 and E911. The reseller wireless carrier seeking certification must also provide handsets used in the appropriate PSAP service area at that time for testing purposes.

E. *Scope of Footnote 66 in Virgin Mobile Order.* The FCC must clarify that the statements in the *Virgin Mobile Order* at Footnote No. 66 also apply to TracFone and any similarly situated carrier. The failure to obtain the required certification from the facility owner in the identified PSAP should preclude delivery of Lifeline or services using the Safelink program.

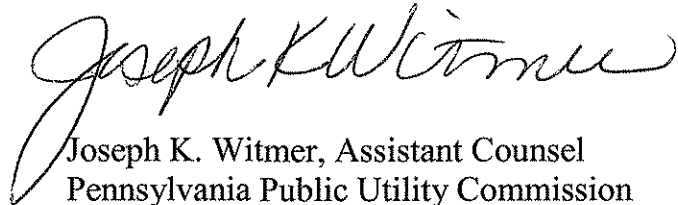
The PaPUC makes these requests in light of Pennsylvania law at 18 Pa.C.S. §§ 4903 and 4904, 66 Pa.C.S. §§ 4903 and 4904. Those provisions impose liability for false swearing in Official Matters and for making falsifications to a public servant.

Submission of these two statements assures public safety officials and the PaPUC of the

veracity of the statements. This also identifies the corporate or legal officials accountable if the service would fail in Pennsylvania.

Finally, this Reconsideration Petition should be set out for national comment given the national ramifications of the *March Orders*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joseph K. Witmer". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Joseph K. Witmer, Assistant Counsel
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day provided an electronic copy of the Pennsylvania Public Utility Commission (PaPUC) Motion for Reconsideration in the above-captioned *March Orders* released March 5, 2009 in Docket No. 96-45. I also hereby certify that I have provided a copy to each party admitted to participate in the agency proceeding and on the Petitioners *TracFone* and *Virgin Mobile* herein, via United States Postal Service, first-class mail, in envelopes addressed as indicated below, and I caused the same to be deposited in a receptacle of the United States Postal Service.

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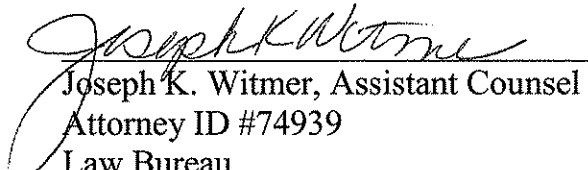
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